

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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SHAWN EDIN,

Plaintiff,

v.

ORDER  
02-CV-572A

GOODYEAR TIRE & RUBBER COMPANY,  
AKROCHEM CORPORATION,  
WELLCO EQUIPMENT, LLC,  
NISSAN MOTOR COMPANY, LTD., and  
NISSAN NORTH AMERICA, INC.,

Defendants.

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WELLCO EQUIPMENT, LLC,

Third-Party Plaintiff,

v.

INTERNATIONAL FIBER CORPORATION,

Third-Party Defendant.

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This case was referred to Magistrate Judge Hugh B. Scott, pursuant to 28 U.S.C. § 636(b)(1), on October 9, 2002. Motions for summary judgment were filed by defendant Akrochem Corporation ("Akrochem") on January 7, 2005 and by defendant Goodyear Tire & Rubber Company ("Goodyear") on February 3, 2005. On March 8, 2005, Magistrate Judge Scott filed a Report and

Recommendation, recommending that defendants' motions for summary judgment be denied.

Defendants Akrochem and Goodyear filed objections to the Report and Recommendation on March 18, 2005. Plaintiff filed a response to the defendants' objections on May 16, 2005. Oral argument on the objections was held on June 28, 2005.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts in part the proposed findings of the Report and Recommendation.

The Court denies the defendants' motions for summary judgment on the issue of proximate cause as there are genuine issues of material fact regarding that proximate cause that must be resolved by a jury. The Court denies, without prejudice, the defendants' motions for summary judgment on the issues of duty and notice. Upon the completion of all discovery, defendants may again move for summary judgment on those issues, if appropriate. Such motion shall be heard in the first instance by Magistrate Judge Scott. The case is referred back to Magistrate Judge Scott for further proceedings.

IT IS SO ORDERED.

/s/ Richard J. Arcara

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HONORABLE RICHARD J. ARCARA  
CHIEF JUDGE  
UNITED STATES DISTRICT JUDGE

Dated: July 14 , 2005